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IMPORTANT DECISIONS

- If probation period is extended beyond stipulated period, seniority is to be determined on basis of ranking in selection process. Date of declaration of probation is irrelevant
3228 (Hyd)
- Punishment of dismissal from service imposed on police officer found guilty of misconduct of bigamy is proportionate
3240 (All)
- Sarpanch of Gram Panchayat is not employer or workman of Panchayat
3291 (SC)
- For promotion on post in technical category, experience is not a substitute for technical qualification. Candidate must have undergone training from recognised institution and obtained certificate in that regard
3313 (Raj)
- After expiry of stipulated period of waiting list, candidate do not have indefeasible legal right to compel State Government to operate waiting list, nor State Government is legally duty bound to operate waiting list
3379 (Raj)
- Wrong entry made in online application, indicating date of publication of result cannot be the only ground to reject candidate who is otherwise qualified
3386 (Mad)
- Transfer outside parent cadre without obtaining consent of employee is illegal
3393 (HP)
- Wage Board recommendations made under S. 10 of Working Journalists Act is not an award
3417 (SC)
- Mother who has begotten child through surrogacy is entitled to maternity leave
3470 (Bom)

CHIEF EDITOR : V. R. MANOHAR, ADVOCATE



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RECOVERY OF EXCESS PAYMENTS FROM GOVERNMENT EMPLOYEES - A STUDY

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1.1. Many instances of excess payments made to Government employees and recovery of such payments have come up for consideration. While the employees cannot claim any right to such excess payments, the right of the employer to recover has been eclipsed on grounds of equitable relief to mitigate the hardship arising out of such recoveries.

1.2. Two possible situations can be visualized namely¹ employees at fault which resulted in such excess payment and the others where the employees have no role.

In the situation when the employees had no role it can be stated thus :—

(i) Where the employees are not guilty of furnishing any incorrect information, which has led the competent authority to commit the mistake of making higher payment to the employees;

(ii) Where the employees made no misrepresentation or committed fraud;

(iii) Where the employees did not participate in the benefits given to them; and

(iv) Employees are innocent in the wrongful determination of their higher emoluments.

In such cases, benefits can be extended and the Apex Court observed :—

“.... Not to recover the excess amount paid to employees in the exercise of its extraordinary powers under Art. 142 of the Constitution which vests in the Supreme Court to pass equitable orders in the ends of justice”.²

The Apex Court pointed out that there was no conflict of opinion in the decisions rendered in *Shyam Balu Verma*,³ *Sahiba Ram Verma*⁴ and *Chandi Prasad Uniyal*.⁵

2. The Supreme Court pointed out that the order of the employer seeking recovery of monetary benefit wrongly extended to employees can only be interfered with in cases where ‘such recovery would result in a hardship of a nature, which would far out-weigh the equi-

table balance of the employer’s right to recover.....’ interference would be called for, where would be iniquitous to recover the payment made.⁶ This interference would be in the exercise of jurisdiction under Art. 142 of the Constitution. In the case of repeated exercise of such power ‘for doing complete justice in any case’ would establish that the recovery being affected was iniquitous and therefore ‘arbitrary’ and exercise of arbitrary powers would violate Art. 142 of the Constitution⁷.

The Supreme Court observed thus⁸ :—

(i) As between two parties, if a determination is rendered in favour of a party, which is weaker of the two, without any serious detriment to the other (which is truly a Welfare State) the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution;

(ii) The right to recover being pursued by the employer will have to be compared with the effect of the recovery on the concerned employee; if it is going to be improper and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary to effect the recovery. In such a situation, the employer’s right would out-balance and therefore, eclipse the right of the employer to recover;

(iii) The constitutional mandate contained in Arts. 38, 39, 39A, 48 and 46 of the Directive Principles of State Policy, equity and good conscience in the matter of livelihood of the people of the country, has to be the basis of all governmental actions.

A careful perusal of the above observations, indicates that an action of the Government to recover the excess payment would be in order, so long as it is not rendered iniquitous to the extent that it would be more unfair, more wrongful, more improper and more unwarranted than the corresponding right of the employer to recover the amount. As long as such an effect is not produced, the recovery

1. See for details *State of Punjab v. Rafiq Masid & others* AIR 2015 SC 696 : 2015 Lab IC 1743.

2. *Ibid*,

3. (1994) 2 SCC 521.

4. (1995) AIR SCW 1780.

5. AIR 2012 SC 2951.

2015 Lab IC Jour / 4 IX

6. See Note 2 paras 6 and 7.

7. *Ibid*

8. *Ibid* para 8.

would be permissible in law.

3. The relief granted to an employer in the matter of recovery of excess amount paid is not a right of the employee for such relief but it is only a relief in equity. This is clear from the Supreme Court ruling in Syed Abdul Qadir's case⁹ where the court observed thus :— "the relief against recovery is granted by courts not because of any right in the employees but in equity, exercising judicial discretion to relieve the employee from the hardship that will be caused, if recovery is ordered".

In cases where it is proved that the employee

(a) had knowledge that the payment received is in excess of what was due;

(b) where the error is detected or corrected within a short time of wrong payment then the matter would be within the realm of judicial discretion and the courts may, on the facts and circumstances of the case, order for recovery of the excess amount paid.¹⁰ In these cases cited,¹¹ the Supreme Court gave the following reasons in support of granting relief to the employees :—

(i) It would be almost impossible for an employee to bear the financial burden of a refund of payment received wrongfully for a long span of time;

(ii) It is apparent that a Government employee is primarily dependent on his wages and if a deduction is to be made from his/her wages it shall not be deduction which would make it difficult for the employee to provide for the needs of the family. Besides food, clothing and shelter, an employee has to cater not only to the educational needs of those dependent on him but also their medical expenses and a variety of sundry expenses.

9. 2009 AIR SCW 1871 : 2009 Lab IC 1588.

10. Sahib Ram v. State of Haryana 1995 AIR SCW 1780; Shyam Balu Verma v. Union of India (1994) 2 SCC 521; Union of India v. M. Bhaskar (1996) 4 SCC 416; V. Ganga Ram v. Director AIR 1997 SC 2776 : (1997 Lab IC 2856); Col B.J. Akkara v. Govt. of India (2006 Lab IC 4210) : 2006 AIR SCW 5252; Purushotham Lal Das v. State of Bihar (2006 Lab IC 4251) : 2006 AIR SCW 5325; Punjab National Bank v. Manjeet Singh AIR 2007 SC 262; Bihar SEB v. Bijay Bahadur (2000) 10 SCC 99.

11. Ibid.

The Supreme Court has laid down the time-limit for recovery of excess payment thus :—

"if the mistake of making a wrongful payment is detected within 5 years, it would be open to the employer to recover the same.

However, if the payment is made for a period in excess of (5) years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payment mistakenly made to the employee".¹²

However, if the right of the employee to recover the excess amount is subject to rule laid down Shyam Balu Varma's case,¹³ which states that, "no steps should be taken to recover or adjust any excess amount paid to the employees due to the fault of the employer, the employee being in no way responsible for the same".

4. Col. B. J. Akkara's case,¹⁴ the Supreme Court further explained the scope of relief to employees with regard to recovery of excess payment thus :—

"A Govt. servant particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf.

This new norm provides that recovery of excess payment with regard to Class III & IV employees "should not be subjected to the ordeal of any recovery. Even though they are beneficiaries of receiving higher emoluments, than were due to them.

In these cases the recovery would be iniquitous, arbitrary and opposed to Art. 14 of the Constitution.

5. With regard to retired employees, the Supreme Court laid down the following¹⁵ :—

(i) If the recovery is sought to be made after the employee retirement or within one year of retirement, it can be done. After the period stipulated expiring no recovery can be made;

12. Ibid.

13. (1994) 2 SCC 521.

14. 2006 AIR SCW 5252 : 2006 Lab IC 4210.

15. Sahib Ram Verma v. Union of India, 1995 AIR SCW 1780.

(ii) The principle of equal pay for equal work would not apply to scales prescribed by UGC;

(iii) Higher post in which the employee was wrongfully made to work, he is entitled to be paid for the work done for the post in which he has discharged his duties.

6. From the series of decisions of the Apex Court, the following rules may be stated for the guidance of the employers :—

(i) With regard to Class III & IV employees they should not be subjected to the ordeal of any recovery;

(ii) Excess payment made may be recovered within a period of (5) years;

(iii) The relief granted to an employee does not arise from any right vested in them but only in equity to relieve them from hardship that might be caused by such recoveries;

(iv) The relief can be only with regard to employees who are not a party to the wrongful payment i.e., that they had no knowledge of such payment or due to their fault either by way of misrepresentation, incorrect statement or fraud. In other words they have no role to play. This is consonance with the principle of equity that one seeks equity but come to courts with clean hands i.e., they should not be of any blame-worthy conduct;

(v) The relief granted would be in consonance with constitutional mandate contained in Arts. 38, 39, 39A, 48 and 46 of the Directive Principles of State Policy. Equity and good

conscience in the matter of livelihood of the people of the country, shall be basis of all governmental actions;

(vi) In the case of retired employees recovery has to be made after employees retirement or within one year of retirement; and

(vii) Higher posts in which the employee was wrongfully made to work, entitles him to get the payment for the work done in the post or in which he has discharged his duties.

It is necessary to ensure that no wrongful payments or excess payments are made the following suggestions are offered :—

(i) Before making payments there should a thorough scrutiny by higher officials who are charged with the responsibility of making the payment;

(ii) In cases, where no clear interpretation of the rule is possible, the officer should invariably refer to the Government for clarification. The Government in return shall refer to CAG (Comptroller & Auditor General) for a quick response to get the position clarified; and

(iii) Since non-recovery of excess payment would cause loss to the Government it should be made recoverable from officers concerned from their pay, so that eventual loss to the Government is protected. Therefore, every care is to be taken to avoid any excess payment by making officers accountable for such payment.

SOME REFLECTIONS IN INDUSTRIAL AND SERVICE JURISPRUDENCE: THE CONCEPT OF "PROPORTIONALITY OF PUNISHMENT" IN DISCIPLINARY PROCEEDINGS: AN APEX JUDICIAL DICTUM: PART-I

By : Ajaya Kumar Samantaray, Deputy Chief Labour Commissioner (Central), Dhanbad : 826003

PRELUDE : The instant case-law, which is going to be discussed in this write up, deals with a wide spectrum of subjects and would make an interesting reading for the esteemed readers. The subjects are as follows :

1. Proportionality of Punishment : As per the facts and circumstances in the instant case.
2. Section 11A of the Industrial Disputes Act, 1947
3. Article 14 of the Constitution of India : When the Administrative Actions can be termed arbitrary?
4. Industrial Employment (Standing Orders) Act, 1946 : Its relation in the instant case.

5. Article 311 (2) (b) of the Constitution of India.

6. Delay and laches : Denial of relief on this ground-whether tenable in the instant case?

7. Limitation Act : Article 137 - its applicability to the Industrial Disputes Act, 1947 in the instant case.

THE CASE LAW :

RAGHUBIR SINGH v. GENERAL MANAGER, HARYANA ROADWAYS, HISSAR, 2014 Lab IC 4266 : 2014 AIR SCW 5515
www.indiankanoon.org/doc/96728565
 DoJ : 3 SEPTEMBER, 2014